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# VIETNAM'S DECREE ON MICROFINANCE: A FLAWED ATTEMPT TO CREATE AN ENABLING LEGAL ENVIRONMENT FOR MICROFINANCE

Elin M. King<sup>†</sup>

*Abstract:* Despite its increasing use as a development tool microfinance still faces significant barriers in reaching the poorest of the poor. Microfinance programs often respond well to short-term needs but are not designed to handle the long-term struggles faced by lending institutions. To resolve these problems, many in the microfinance field have begun to tout the concept of creating “enabling” legal and regulatory frameworks. Such an enabling environment would ideally eliminate unreasonable barriers to entry into the field, encourage innovation, and reinforce industry best practices. An enabling regulatory scheme could also increase legal certainty, encourage more investors to enter the field and allow microfinance institutions (“MFIs”) to raise money by accessing world financial markets.

In an effort to create such an enabling environment, Vietnam passed a Microfinance Decree in 2004, creating a separate regulatory scheme for microfinance institutions. Prior to the passage of the Microfinance Decree, the legal status of microfinance institutions in Vietnam was very ambiguous. Although the Microfinance Decree creates a more predictable and stable environment, it does not achieve many of the goals of an “enabling” environment, and it threatens the viability of many of the MFIs already operating in Vietnam. The new framework makes strides by clarifying the legal status of MFIs and allowing them to become deposit-taking institutions under limited circumstances. The new law also contains provisions aimed at increasing professionalism and encouraging long-term planning. Unfortunately, the Microfinance Decree also contains provisions that may discourage commercial and foreign investment in microfinance and create unnecessary burdens for small MFIs. In order for Vietnam to truly enable the growth of microfinance it should enact new provisions to protect small MFIs, encourage new players to enter the microfinance field, and continue to develop the regulations underpinning the Microfinance Decree.

## I. INTRODUCTION

In 2006, Mohammad Yunus and the Grameen Bank won the Nobel Peace Prize “for their efforts to create economic and social development from below.”<sup>1</sup> Neither a politician nor a traditional peace activist, Mohammad Yunus is, instead, an economist who developed a system of advancing small loans to people living in impoverished conditions.<sup>2</sup> What started as a social experiment three decades ago has blossomed into a major

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<sup>1</sup> Press Release, Nobel Foundation, The Nobel Peace Prize for 2006 (Oct. 13, 2006), [http://nobelprize.org/nobel\\_prizes/peace/laureates/2006/press.html](http://nobelprize.org/nobel_prizes/peace/laureates/2006/press.html).

<sup>2</sup> Michael Phillips et al., *'Microloan' Father Yunus Is Awarded Nobel Peace Prize—Bank Spurred Global Movement Through Aid to Women, Poor; Major Insurers Following Suit*, WALL ST. J., Oct. 14, 2006, at B1.

development tool used in many parts of the world.<sup>3</sup> Proponents claim that microfinance is an important tool that will help raise the status of women and alleviate poverty.<sup>4</sup>

Despite examples of success such as the Grameen Bank, however, most MFIs are unable to maintain viability over the long term.<sup>5</sup> Of the large number of MFIs operating worldwide, only around sixty have a sustainable or near sustainable financial model.<sup>6</sup> The majority of MFIs cannot meet the demand for financial services with traditional funding sources.<sup>7</sup> Although many MFIs would like to launch more sophisticated financial programs, barriers such as financial requirements set by central banks, prohibitions on savings mobilization, and interest rate subsidies in many countries prevent most MFIs from becoming anything more than donor-dependent grassroots lending programs.<sup>8</sup>

The precarious financial position of many MFIs severely limits their ability to expand offerings and to meet the needs of the poorest of the poor.<sup>9</sup> Although a number of reforms have been proposed to deal with these issues, many development agencies, such as the World Bank, have begun to focus on the need for legal and regulatory reform.<sup>10</sup> In response, a handful of countries have either passed or are in the process of drafting “enabling” legislation.<sup>11</sup> Such an enabling environment would, ideally, eliminate unreasonable barriers to entry into the field, encourage innovation, and reinforce industry best practices. An enabling regulatory scheme would also

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<sup>3</sup> For a summary of microfinance initiatives in many different countries, see United Nations Resource Library—Country Profiles, [http://www.yearofmicrocredit.org/pages/reslib/reslib\\_country\\_profiles.asp](http://www.yearofmicrocredit.org/pages/reslib/reslib_country_profiles.asp) (last visited Apr. 17, 2007).

<sup>4</sup> Betsy Cummings, *Tiny Loans Stimulate the Appetite for More*, N.Y. TIMES, Jan. 27, 2005, at C1.

<sup>5</sup> ASIAN DEVELOPMENT BANK, FINANCE FOR THE POOR: MICROFINANCE DEVELOPMENT STRATEGY 17 (2000).

<sup>6</sup> Aaron Jones, *Promotion of Commercially-Viable Microfinance Sector in Emerging Markets*, 13 GEO. J. ON POVERTY L. & POL’Y 187, 195 (2006).

<sup>7</sup> JOSELITO GALLARDO, THE WORLD BANK, FRAMEWORK FOR REGULATING MICROFINANCE INSTITUTIONS: THE EXPERIENCE IN GHANA AND IN THE PHILIPPINES 4 (2002).

<sup>8</sup> *The Legal and Regulatory Framework Required to Enable Micro-finance Institutions to Operate Effectively*, COUNTDOWN 2005: NEWSL. OF MICROCREDIT SUMMIT CAMPAIGN, May 2001, available at <http://www.microcreditsummit.org/newsletter/aprms5.htm> [hereinafter NEWSLETTER OF MICROCREDIT SUMMIT CAMPAIGN].

<sup>9</sup> Jones, *supra* note 6, at 194. There are many different viewpoints on who fits into the category of the “poorest of the poor.” See generally Measuring Poverty, <http://go.worldbank.org/ZL042FVII0> (last visited Apr. 17, 2007).

<sup>10</sup> GALLARDO, *supra* note 7, at 4.

<sup>11</sup> For information on the current status of legislation in many countries, see Microfinance Regulation and Supervision Resource Center, [http://microfinancegateway.com/resource\\_centers/reg\\_sup](http://microfinancegateway.com/resource_centers/reg_sup) (last visited Apr. 17, 2007).

increase legal certainty, encouraging more investors to enter the field and allowing MFIs to raise money by accessing world financial markets.<sup>12</sup>

In 2004, Vietnam promulgated a decree ("Microfinance Decree") regulating all microfinance institutions.<sup>13</sup> While this new system creates a more predictable and stable environment, it does not achieve many of the goals of an "enabling" environment, and it threatens the viability of many MFIs already operating in Vietnam. In order for microfinance to achieve its maximum potential in Vietnam, the legal framework needs to be changed to protect small, grassroots level MFIs, encourage the participation of foreign and commercial players, and reinforce industry best practices.

Part II of this comment examines why microfinance has become a major international development tool. Part III discusses the current trend towards regulating microfinance. Part IV examines the history of microfinance in Vietnam and evaluates the effectiveness of provisions included in the Microfinance Decree. Part V argues that Vietnam should make changes to protect small MFIs, encourage the participation of commercial and foreign players, and continue to develop the underlying regulatory scheme to improve the effectiveness of microfinance in Vietnam.

## II. THE DEVELOPMENT OF MICROFINANCE: FROM SOCIAL EXPERIMENT TO MAJOR DEVELOPMENT TOOL

Microfinance started out as a small-scale grassroots attempt to alleviate poverty. Over the last 30 years, it has expanded into a major development tool. Although this growth has met with some success, it has also revealed many of the limitations facing microfinance. In an effort to strengthen microfinance, many practitioners and scholars have begun to examine the possibility of using legal and regulatory reform to address these concerns.

### A. *Microfinance Has Grown from a Small-Scale Social Experiment to a Major Development Tool*

Microfinance is the provision of simple banking services to poor households and people.<sup>14</sup> Microfinance is an umbrella term for a host of services including deposits, loans, payment services, money transfers, and

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<sup>12</sup> Jones, *supra* note 6, at 204.

<sup>13</sup> Decree of the Government on Organization and Operation of Micro Finance Institutions in Vietnam, 28/2005/ND-CP (2005) available at [http://microfinancegateway.org/files/25507\\_file\\_Decree\\_on\\_org\\_and\\_op\\_of\\_MFIs\\_in\\_Vietnam.pdf](http://microfinancegateway.org/files/25507_file_Decree_on_org_and_op_of_MFIs_in_Vietnam.pdf). [hereinafter Microfinance Decree].

<sup>14</sup> Jones, *supra* note 6, at 187.

insurance.<sup>15</sup> Traditionally, the emphasis for microfinance has been on microcredit, a system of advancing small loans to low-income households to use in income-generating activities.<sup>16</sup> Because the majority of MFIs today focus almost exclusively on microcredit, the two terms are used almost interchangeably.<sup>17</sup> For this analysis, however, the terms will be used as separate concepts.

Muhammad Yunus developed the earliest efforts in microfinance.<sup>18</sup> Yunus believed that poverty could be significantly alleviated by giving the poor opportunities to start their own small businesses.<sup>19</sup> In 1974, Yunus loaned forty-two basket weavers the equivalent of twenty-seven dollars to start their own small businesses.<sup>20</sup> Despite the fact that there were no signed agreements and no collateral attached to the loans, all forty-two participants repaid the loans in full.<sup>21</sup> Encouraged by his success, Yunus went on to found the Grameen Bank.<sup>22</sup> As of 2005, the Grameen Bank had 1740 branches with 5.6 million customers.<sup>23</sup>

Since Yunus' initial experiment, microcredit has become a major international development tool. Studies have shown that microfinance is effective at helping the poor to "improve household and enterprise management, increase productivity, smooth income flows and consumption costs, enlarge and diversify their microbusinesses, and increase their incomes."<sup>24</sup> A dramatic indicator of the international community's acceptance of microcredit is the fact that the United Nations declared 2005 the "International Year of Microcredit."<sup>25</sup> Encouraged by the success of Mohammad Yunus and the Grameen Bank, many organizations have since followed suit offering microcredit programs around the world.<sup>26</sup> Although

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<sup>15</sup> Isobel Coleman, *Defending Microfinance*, 29-WTR FLETCHER F. WORLD AFF. 181, 182 (2005).

<sup>16</sup> Kenneth Anderson, *Microcredit: Fulfilling or Belying the Universalist Morality of Globalizing Markets?*, 5 YALE HUM. RTS. & DEV. L.J. 85, 90-91 (2002).

<sup>17</sup> Khandakar Elahi & Danopoulos, *Microfinance and Third World Development: A Critical Analysis*, 32 J. POL. & MILITARY SOC. 61, 62 (2004).

<sup>18</sup> For a detailed history of Muhammad Yunus' pioneering efforts, see MUHAMMAD YUNUS & ALAN JOLIS, *BANKER TO THE POOR: MICRO-LENDING AND THE BATTLE AGAINST WORLD POVERTY* (1999).

<sup>19</sup> Connie Bruck, *Millions for Millions*, NEW YORKER, Oct. 30, 2006, at 62.

<sup>20</sup> *Id.*

<sup>21</sup> Celia Dugger, *Peace Prize to Pioneer of Loans for Those Too Poor to Borrow*, N.Y. TIMES, Oct. 14, 2006, at A1.

<sup>22</sup> YUNUS & JOLIS, *supra* note 18, at xi.

<sup>23</sup> Key Information of the Grammen Bank, [http://www.grameen-info.org/infoharvus\\$.html](http://www.grameen-info.org/infoharvus$.html) (last visited Apr. 17, 2007).

<sup>24</sup> MARGUERITE S. ROBINSON, *THE MICROFINANCE REVOLUTION: SUSTAINABLE FINANCE FOR THE POOR* 6 (2001).

<sup>25</sup> International Year of Microcredit 2005, <http://www.yearofmicrocredit.org> (last visited Apr. 17, 2007).

<sup>26</sup> Phillips et al., *supra* note 2.

the vast majority of microfinance programs are run by non-profit institutions, a few commercial banks, such as Citibank and HSBC, have begun to experiment with microfinance programs.<sup>27</sup> Many high-tech philanthropists, such as the founders of Dell, Google, and Microsoft, have also donated large sums of money to expanding the scope of microfinance programs.<sup>28</sup> As of 2005, there were over 10,000 MFIs operating throughout the world.<sup>29</sup> These institutions made 100 million microloans in 2005.<sup>30</sup> Although the majority of programs have focused on microcredit, many advocates are calling for the expansion to other microfinance services.<sup>31</sup>

*B. Despite Some Success, Most Microfinance Programs Fail to Reach Maximum Effectiveness*

Despite the rapid expansion of microfinance services over the last three decades, MFIs face a number of significant hurdles to reaching their maximum potential and becoming sustainable institutions. Although a few well-known MFIs have had considerable success, many early microfinance efforts were ad-hoc programs without a well-defined strategy.<sup>32</sup> The Asian Development Bank (“ADB”), one of the major backers of microfinance programs in Asia, said that its own early microfinance attempts paid little attention to financial viability and were poorly targeted.<sup>33</sup> Over the years, a large portion of microfinance programs have been dependent on private donor or government funding.<sup>34</sup> Although both public and private sources are crucial to the development of microfinance, each source comes with its unique problems. Private donors, although well intentioned, often want to see immediate results.<sup>35</sup> This creates pressure on MFIs to implement too hastily, often before spending adequate time identifying target groups and tailoring programs to local needs.<sup>36</sup> Government-run microfinance programs

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<sup>27</sup> Eric Bellman, *Invisible Hand: Entrepreneur Gets Big Banks to Back Very Small Loans—Microfinancing-for-Profit Effort In India Draws Business From Citigroup, HSBC—Ms. Dobbala's Baby* Buffalo, WALL ST. J. (Eastern Edition), May 15, 2006, at A1.

<sup>28</sup> Bruck, *supra* note 19.

<sup>29</sup> Phillips et al., *supra* note 2.

<sup>30</sup> *Id.*

<sup>31</sup> ASIAN DEVELOPMENT BANK, *supra* note 5, at 22.

<sup>32</sup> BRETT E. COLEMAN, ASIAN DEVELOPMENT BANK, THE ROLE OF THE ASIAN DEVELOPMENT BANK IN PROMOTING THE DEVELOPMENT OF MICROFINANCE IN LAO PDR AND VIET NAM 2 (2003), available at [http://www.microfinancegateway.org/files/27552\\_file\\_6.pdf](http://www.microfinancegateway.org/files/27552_file_6.pdf).

<sup>33</sup> *Id.*

<sup>34</sup> ASIAN DEVELOPMENT BANK, *supra* note 5, at 17.

<sup>35</sup> Celia R. Taylor, *Microcredit as Model: A Critique of State/NGO Relations*, 29 SYRACUSE J. INT'L L. & COM. 303, 327-28 (2002).

<sup>36</sup> *Id.*

also face their own challenges, often having distorted policy environments and lacking a business culture.<sup>37</sup>

Unfortunately, the legal and regulatory environment in some countries prevents MFIs from adopting many sustainable practices. One way to help MFIs become sustainable institutions is to allow MFIs to become deposit-taking institutions.<sup>38</sup> By leveraging deposits, MFIs are able to continue issuing microloans without being as dependent on outside sources.<sup>39</sup> Unfortunately, although some MFIs have indicated interest in coupling microsavings programs with microcredit, the legal and regulatory environment of most countries makes this impracticable.<sup>40</sup> Targeted towards traditional banking, many countries' banking laws set requirements for deposit-taking institutions that are unrealistic for the majority of MFIs.<sup>41</sup> Capital requirements, reporting protocols, and taxation policies may all prevent MFIs from mobilizing savings.<sup>42</sup>

Allowing MFIs to become formal financial institutions could also allow them greater access to international financial markets.<sup>43</sup> Traditional banks are hesitant to invest in MFIs unless they have appropriate legal and financial standing.<sup>44</sup> Outside investors may also be unwilling to back MFIs "unless appropriate performance standards and regulation and supervision regimes are developed and enforced and measures are introduced to protect public deposits."<sup>45</sup> In addition to increasing private investment, many are hopeful that if MFIs become viable finance institutions, they may be able to raise money through securities issued in the formal financial market.<sup>46</sup>

### C. *An Enabling Legal and Regulatory Environment Can Help Maximize the Potential of Microfinance*

Although there are many factors that need to be addressed before MFIs can reach their maximum potential,<sup>47</sup> one key component is creating

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<sup>37</sup> COLEMAN, *supra* note 32, at 2.

<sup>38</sup> GALLARDO, *supra* note 7, at 4.

<sup>39</sup> *Id.*

<sup>40</sup> NEWSLETTER OF MICROCREDIT SUMMIT CAMPAIGN, *supra* note 8.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> GALLARDO, *supra* note 7, at 4.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> COLEMAN, *supra* note 32, at 3.

<sup>46</sup> GALLARDO, *supra* note 7, at 4.

<sup>47</sup> Other significant factors that need to be addressed include the lack of transportation, irrigation and telecommunications infrastructure. Pierre Fallavier, *Developing Micro-Finance Institutions in Vietnam: Policy Implications to Set up An Enabling Environment* 55 (1994) (M.A. thesis, McGill University), available at [http://www.arts.uwaterloo.ca/~vecon/download/fallavier/mfi\\_vnm.pdf](http://www.arts.uwaterloo.ca/~vecon/download/fallavier/mfi_vnm.pdf).

an “enabling” legal and regulatory framework.<sup>48</sup> Rather than correcting perceived abuses in an industry, “enabling” legislation aims to encourage new institutions or improve the performance of existing ones.<sup>49</sup> Examples of enabling legislation include revising existing banking regulations to allow deposit-taking,<sup>50</sup> removing interest rate subsidies,<sup>51</sup> and encouraging industry best practices by setting up MFI-appropriate auditing and reporting requirements.<sup>52</sup> Creating an enabling legal and regulatory environment could remove the barriers that prevent MFIs from becoming deposit-taking institutions.<sup>53</sup> Having a positive and predictable regulatory environment could also encourage existing microfinance backers to expand their current services. For example, in a survey of existing microfinance institutions conducted in Vietnam, most programs stated that they had no plan to expand their geographic scope or to offer new services.<sup>54</sup> Most of these programs pointed to “the lack of a clear legal and regulatory framework” as a key reason for their hesitancy to expand.<sup>55</sup> In addition, many of the major institutional donors have begun to scrutinize individual countries’ legal and regulatory frameworks before deciding to invest.<sup>56</sup> The ADB, one of the largest donors providing funding and technical support in Asia, now has a policy of not assisting microfinance programs in countries with an unfavorable policy environment.<sup>57</sup>

### III. ALTHOUGH MICROFINANCE IN VIETNAM HAS HAD SOME SUCCESS, ENABLING LEGISLATION COULD HELP MFIS ADVANCE

Vietnam’s experience provides an interesting case study for other countries considering implementing microfinance laws. Although there are a few other countries with some form of microfinance legal framework, Vietnam’s framework is one of the newest. Rather than create a framework piece by piece, Vietnam instead drafted its new law after undertaking a study

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<sup>48</sup> ROBERT CHRISTEN ET AL., CONSULTATIVE GROUP TO ASSIST THE POOR & WORLD BANK, MICROFINANCE CONSENSUS GUIDELINES: GUIDING PRINCIPLES ON REGULATION AND SUPERVISION OF MICROFINANCE 8 (July 2003), *available at* [http://microfinancegateway.org/files/13473\\_13473.pdf](http://microfinancegateway.org/files/13473_13473.pdf).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 10.

<sup>51</sup> KATE DRUSCHEL & ANNA BANTUG-HERRARA, USAID, MICRONOTE 10: THE ULTIMATE BALANCING ACT: INVESTOR CONFIDENCE AND REGULATORY CONSIDERATIONS FOR MICROFINANCE (2005), *available at* [http://www.microlinks.org/ev\\_en.php?ID=9097\\_201&ID2=DO\\_TOPIC](http://www.microlinks.org/ev_en.php?ID=9097_201&ID2=DO_TOPIC).

<sup>52</sup> CHRISTEN ET AL., *supra* note 48, at 10.

<sup>53</sup> GALLARDO, *supra* note 7, at 4.

<sup>54</sup> COLEMAN, *supra* note 32, at 18.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 2.

<sup>57</sup> *Id.*



financed by the ADB.<sup>58</sup> Vietnam also has a fairly well-developed microfinance sector. It will be instructive to observe the effects of the new framework on already existing programs. Examining the considerations that went into the new law, as well as its effects on the microfinance sector, will help other countries as they consider whether and how to attempt creating an enabling microfinance framework.

A. *Despite Vietnam's Strong History of Supporting Microfinance, There Is Much Room for Improvement*

Vietnam has a strong history of encouraging the development of financial services for the poor. Vietnam's first experiments with microfinance came with the Doi Moi reforms of the 1980s.<sup>59</sup> Formerly under a Soviet-style communist system, in 1985 Vietnam instituted a number of free-market economic reforms, eventually allowing private ownership of land.<sup>60</sup> Previously, the central planning model generally ignored the financial needs of individuals and instead focused on financing state-owned enterprises.<sup>61</sup> Gradually, the State Bank of Vietnam ("State Bank") began to recognize the need for decentralized financial services targeted toward the general population.<sup>62</sup> In 1990, the State Bank set up the Vietnam Bank for Agriculture ("VBA") specifically to provide credit in rural areas at subsidized interest rates.<sup>63</sup>

Despite some success, the VBA was not able to meet the full demand for loans and the government responded by creating People's Credit Funds ("PCFs") and the Vietnam Bank for the Poor ("VBP").<sup>64</sup> Created in 1994, PCFs were modeled after the credit-and-savings model developed by Yunus, with regional and national credit unions set up to advise local groups.<sup>65</sup> The VBP, started a year later in 1995, was set up to offer collateral-free subsidized credit services to individuals too poor to qualify for other programs.<sup>66</sup> All three programs were able to reach a large number of customers in a short time. By 1996, the VBA had over 1800 branches providing credit to 7 million families, 674 PCFs were operating with

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<sup>58</sup> B. BYAMBASAIKHAN, ASIAN DEVELOPMENT BANK, TECHNICAL ASSISTANT COMPLETION REPORT: TA 3741-VIE (2004), available at <http://www.adb.org/Documents/TACRs/VIE/tacr-vie-3741.pdf>.

<sup>59</sup> Fallavier, *supra* note 47, at 48.

<sup>60</sup> *See id.*

<sup>61</sup> *Id.* at 64.

<sup>62</sup> *Id.* at 65.

<sup>63</sup> *Id.* at 65-66.

<sup>64</sup> *Id.* at 66.

<sup>65</sup> *Id.* at 65-66.

<sup>66</sup> *Id.* at 66.

275,000 members, and the VBP had dispersed loans to approximately 1.3 million families.<sup>67</sup> Also during this same time period, a number of MFIs operated by non-governmental organizations (“NGOs”) began work in Vietnam.<sup>68</sup> As of 2005, with the government and NGO programs combined, an estimated 70% of rural households were receiving some sort of MFI service.<sup>69</sup>

Despite commendable efforts by both the public and the private sectors, there is still considerable room for improvement. Although Vietnam is currently the second fastest growing economy in Asia,<sup>70</sup> as of 2004, it still had a poverty rate of 28.9%.<sup>71</sup> MFIs may reach a large section of rural households, but overall, 40% of poor households still do not have access to credit, either through formal or informal services.<sup>72</sup> When they do have access, it is generally only to short-term microcredit and not to other financial services.<sup>73</sup> Because of the subsidized interest rates offered by government programs, small NGO-run MFIs are often forced to operate at interest rates too low to allow them to break even, much less expand their offerings.<sup>74</sup> A lack of commercialized distribution channels<sup>75</sup> and poor transportation and telecommunications infrastructure<sup>76</sup> also prevent existing programs from reaching the poorest of the poor.<sup>77</sup> Even when MFIs operate in very impoverished areas, many people do not take advantage of opportunities because they do not understand the paperwork involved, are not aware of the existence of the programs, or the programs are not tailored to their individual circumstances.<sup>78</sup>

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<sup>67</sup> *Id.* at 65-66.

<sup>68</sup> *Id.* at 68.

<sup>69</sup> Doan Anh Tuan, *Vietnam's New Law on Microfinance: On the Way to an Enabling Environment* 4 (Consultative Group to Assist the Poor, Essays on Regulation and Supervision No. 17, 2005).

<sup>70</sup> Joan L. Levinstein & Clay Chandler, *Vietnam VroooooM: Asia's Second-Fastest-Growing Economy is Surging Ahead—and Taking Its Place on the Global Stage*, FORTUNE, Dec. 11, 2006, at 147.

<sup>71</sup> Tuan, *supra* note 69, at 3.

<sup>72</sup> Daniel L. Zook, *The Vietnamese Microfinance Sector* 3 (The William Davidson Inst., Policy Briefs No. 35, 2005) available at <http://www.wdi.umich.edu/Publications/PolicyBriefs>.

<sup>73</sup> Tuan, *supra* note 69, at 5.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Fallavier, *supra* note 47, at 55.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 59.

B. *Before Passage of the Microfinance Decree, the Ambiguous Legal Status of MFIs Prevented Further Expansion of the Microfinance Sector*

Before passage of the Microfinance Decree, the only legal guidance covering MFIs was the Law on Credit Institutions (“Credit Institutions Law”), a general banking law that did not anticipate the unique features and challenges that would arise with the development of microfinance.<sup>79</sup> The Credit Institutions Law regulates the “organization and operation of credit institutions and banking activities of other organizations.”<sup>80</sup> The Credit Institutions Law defines “credit institutions” as enterprises that receive deposits, extend credit, and provide banking services.<sup>81</sup> It also defines a class of “non-bank credit institutions,” which provide some banking services but do not receive deposits or accept payment services.<sup>82</sup> Although this definition appears to cover MFIs, only joint-venture and 100% foreign-owned non-bank credit institutions are allowed to apply for this status.<sup>83</sup> The Credit Institutions Law does not specifically address the status of MFIs.<sup>84</sup> It states that those offering financial services without a license are subject to administrative sanctions and possibly even criminal prosecution.<sup>85</sup> Because MFIs could not establish themselves as independent institutions and did not want to violate banking laws, most operated as “projects” attached to other social programs.<sup>86</sup> Most microfinance programs had more than one agency involved, and it was often unclear who had ownership rights to a specific program.<sup>87</sup> This lack of ownership transparency made many agencies hesitant about the longer-term sustainability and accountability of microfinance programs.<sup>88</sup>

Although already-existing MFIs seem willing to bear the risk of offering loans in an unpredictable policy environment, many MFIs are unwilling to expand their offerings or to increase the scale of their operations.<sup>89</sup> When surveyed, the majority of MFIs in Vietnam said that the

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<sup>79</sup> Law 02-1997-QH10 on Credit Institutions (Vietnam) [hereinafter Credit Institutions Law].

<sup>80</sup> *Id.* at preamble.

<sup>81</sup> *Id.* art. 20(1).

<sup>82</sup> *Id.* art. 20(3).

<sup>83</sup> *Id.* art. 107.

<sup>84</sup> See generally Credit Institutions Law, *supra* note 79.

<sup>85</sup> *Id.* arts. 125(1), 126.

<sup>86</sup> Tuan, *supra* note 69, at 9.

<sup>87</sup> Zook, *supra* note 72, at 4.

<sup>88</sup> *Id.*

<sup>89</sup> ADAM MCCARTY, MICROFINANCE IN VIETNAM: A SURVEY OF SCHEMES AND ISSUES 23 (2001).

most pressing need was for change to the legal environment facing MFIs.<sup>90</sup> The ADB, one of the primary microfinance donors in the region, has made legal reform one of the key conditions for its continued assistance with microfinance programs in Vietnam.<sup>91</sup> The World Bank's Rural Finance Program has also been unable to disburse funds to Vietnamese MFIs because the programs lack a clear legal status.<sup>92</sup> A legal system that provides licensing gives MFIs a government stamp of approval, which, in turn, may make it easier for MFIs to access commercial financial markets.<sup>93</sup> Many commercial banks and other capital lending institutions are also unwilling to lend to microfinance programs that are not licensed.<sup>94</sup>

Outside of the ambiguous status of MFI loan programs, the Credit Institutions Law specifically prohibits offering certain financial services.<sup>95</sup> Payment and treasury services,<sup>96</sup> participation in the national monetary market,<sup>97</sup> and engaging in the insurance business are all practices specifically limited to recognized credit institutions.<sup>98</sup> Arguably, the government has an interest in making sure that these types of services are limited to reputable companies. Yet, although these services are offered through traditional banks, they are usually not offered on terms that are realistic for the poor.<sup>99</sup>

Traditional banks are also ineffective at offering services in many geographically remote areas.<sup>100</sup> Studies in other countries have demonstrated that there is a vast demand for microfinance services that are not currently offered.<sup>101</sup> In particular, there is a growing demand for microsavings and microcredit services to help poor families weather financial risks such as illness, death of a family member, and natural

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<sup>90</sup> *Id.*

<sup>91</sup> B. COLEMAN, ASIAN DEVELOPMENT BANK, TECHNICAL ASSISTANCE TO THE SOCIALIST REPUBLIC OF VIET NAM FOR IMPLEMENTING THE REGULATORY AND SUPERVISORY FRAMEWORK FOR MICROFINANCE 3-4 (2005).

<sup>92</sup> NGUYEN THI HIEN CHI, JOINT VIENNA INSTITUTION, PRO-POOR FINANCIAL SYSTEM DEVELOPMENT 13 (2004).

<sup>93</sup> Jones, *supra* note 6, at 201.

<sup>94</sup> Zook, *supra* note 72, at 4.

<sup>95</sup> Credit Institutions Law, *supra* note 79, ch. 3, § 4, art. 70.

<sup>96</sup> *Id.* ch. 3, § 3.

<sup>97</sup> *Id.* ch. 3, § 4, art. 70.

<sup>98</sup> *Id.* ch. 3, § 4, art. 74.

<sup>99</sup> CHI, *supra* note 92, at 10.

<sup>100</sup> Fallavier, *supra* note 47, at 53.

<sup>101</sup> ASIAN DEVELOPMENT BANK, *supra* note 5, at 10-11. See Country Profiles, [http://www.yearofmicrocredit.org/pages/reslib/reslib\\_country\\_profiles.asp](http://www.yearofmicrocredit.org/pages/reslib/reslib_country_profiles.asp) (last visited Apr. 24, 2007), for country-specific information.

disasters.<sup>102</sup> An enabling framework could allow MFIs to offer a wider range of microfinance services while at the same time ensuring that these new services are offered by stable accredited institutions.

Another often cited barrier to the growth of the microfinance sector in Vietnam is the government policy of offering subsidized interest rates in state-administered MFI programs.<sup>103</sup> Bank lending rates are capped at approximately 12-14% per annum.<sup>104</sup> The VBP has a policy of charging 8-9% while many other national programs offer rates that are even lower.<sup>105</sup> MFIs operating in Vietnam contend that in order to compete with government programs, they are forced to offer comparable interest rates.<sup>106</sup> At these interest rates, MFIs are unable to break even, much less expand their offerings.<sup>107</sup> Research in other countries has demonstrated that the poor are willing to pay high interest rates to have access to financial services.<sup>108</sup> MFI operators insist that eliminating interest rate subsidies would encourage efficiency and allow MFIs to establish sustainable business models.<sup>109</sup>

#### IV. ALTHOUGH THE MICROFINANCE DECREE ESTABLISHES SOME PREDICTABILITY, ITS ACTUAL IMPACT MAY YIELD MIXED RESULTS

Hoping to build on the existing microfinance framework, in January 2002, the government of Vietnam signed an agreement with ADB to receive technical assistance in the development of new microfinance legislation.<sup>110</sup> The final version of the Microfinance Decree was promulgated on March 9, 2004.<sup>111</sup> The Microfinance Decree requires that *all* microfinance operators transform into regulated MFIs by March 2007.<sup>112</sup> The Microfinance Decree does not, however, regulate PCFs or the VBP.<sup>113</sup>

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<sup>102</sup> See Manfred Zeller & Manohar Sharma, *Many Borrow, More Save, and All Insure: Implications for Food and Micro-Finance Policy*, 25 FOOD POL'Y 143 (2000), for an in-depth discussion of the demand for these services.

<sup>103</sup> JAMES SEWARD, THE WORLD BANK FINANCIAL SECTOR GROUP, FINANCIAL SECTOR POLICY ISSUES NOTE: VIETNAM BANK FOR SOCIAL POLICIES 14 (2004).

<sup>104</sup> ASIAN DEVELOPMENT BANK, TECHNICAL ASSISTANCE TO THE SOCIALIST REPUBLIC OF VIET NAM FOR PREPARING THE FRAMEWORK FOR MICROFINANCE DEVELOPMENT 3 (2001).

<sup>105</sup> *Id.*

<sup>106</sup> SEWARD, *supra* note 103, at 17.

<sup>107</sup> Tuan, *supra* note 69, at 7.

<sup>108</sup> Yoko Miyashita, *Microfinance and Poverty Alleviation: Lessons from Indonesia's Village Banking System*, 10 PAC. RIM L. & POL'Y J. 147, 159 (2000).

<sup>109</sup> COLEMAN, *supra* note 91, at 4.

<sup>110</sup> Tuan, *supra* note 69, at 10.

<sup>111</sup> Microfinance Decree, *supra* note 13.

<sup>112</sup> Tuan, *supra* note 69, at 11.

<sup>113</sup> *Id.*

Now that Vietnam has passed a law specifically addressing the status of MFIs, it is important to examine not only what the law says but also whether the law meets the needs of the Vietnam microfinance sector. Specifically, this section will examine the scope of the law, provisions regulating deposit taking, finance activities allowed, measures to enforce industry best practice, and requirements for MFIs ownership. Although on the surface many of the provisions appear to boost the Microfinance sector, some provisions may actually hurt existing MFIs.<sup>114</sup> The new law also reinforces the status quo rather than encouraging innovation.

A. *By Requiring All MFIs to Comply, the Microfinance Decree May Push Smaller MFIs Out of Business*

Forcing all MFIs to come up with legal capital unnecessarily curtails small MFIs. Furthermore, it offers very little systemic benefit. The Microfinance Decree, which regulates *all* MFIs operating in Vietnam,<sup>115</sup> gives them two years from the date of enactment to comply with its provisions.<sup>116</sup> In order to continue operation, each MFI must establish legal capital of 500 million VND (\$31,400)<sup>117</sup> and must apply for a license with the State Bank.<sup>118</sup> Although it is important that a new law provide stability and predictability, bringing all MFIs under one umbrella may prove counterproductive. An enabling law will ideally encourage willing MFIs to expand outside the grassroots, donor-funded, microcredit model while still protecting organizations that choose to follow the traditional model.<sup>119</sup>

An enabling law should not preclude the grassroots model for MFIs, but forcing all MFIs to comply with registration requirements and to establish legal capital may do exactly that. Small MFIs' resources are stretched so thin that they may not be able to generate the required legal capital.<sup>120</sup> Although already established MFIs may find ways to secure the capital, the capital requirement may discourage the establishment of new grassroots-level MFIs. There is a growing consensus that not all MFIs need to be regulated.<sup>121</sup> The main purpose of requiring legal capital is to ensure that financial institutions do not pose a threat to the financial system as a

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<sup>114</sup> Microfinance Decree, *supra* note 13, arts. 3, 8, 16, 32.

<sup>115</sup> *Id.* art. 1, § 1.

<sup>116</sup> *Id.* art. 37, § 2.

<sup>117</sup> *Id.* art. 3, § a.

<sup>118</sup> *Id.* art. 11.

<sup>119</sup> GALLARDO, *supra* note 7, at 5-6.

<sup>120</sup> Tuan, *supra* note 69, at 12.

<sup>121</sup> Jones, *supra* note 6, at 201.

whole.<sup>122</sup> MFIs that only offer microloans do not pose a system-wide risk because, if they fold, there is no negative repercussion to their clients (in fact, it may provide a benefit because the clients may not have to repay their loans).<sup>123</sup> Government oversight is cost intensive, and regulating all MFIs adds unnecessary administrative costs.<sup>124</sup> Forcing all MFIs to come up with legal capital could unnecessarily curtail small MFIs and otherwise offer very little systemic benefit.<sup>125</sup>

*B. The New Microfinance Decree Improves Microfinance Regulation by Allowing MFIs to Become Deposit-Taking Institutions*

The most promising features of the Microfinance Decree are aimed at allowing MFIs to become deposit-taking institutions. First, the Microfinance Decree allows MFIs to accept voluntary savings if they meet certain conditions.<sup>126</sup> Deposit-taking MFIs must meet a higher legal capital requirement of five billion VND (\$314,000).<sup>127</sup> Second, before starting savings programs, MFIs must also have received compulsory savings for at least three years, have had sound operation for the last three years, have adequate administrators, controllers and managers, and have sufficient information systems.<sup>128</sup> These new provisions are perhaps the most beneficial contribution of the new Microfinance Decree because they outline a clear, predictable route by which MFIs can become deposit-taking institutions.<sup>129</sup> The legal capital requirement is quite reasonable compared to other countries in the region.<sup>130</sup> Yet the capital requirement is high enough to preserve stability in the financial system as a whole by ensuring that only MFIs with adequate capital are offering deposit services. Requiring MFIs to operate for three years also helps to minimize systemic risk by making sure that only healthy MFIs become deposit-taking institutions. Third, the personnel and information system requirements also ensure that MFIs have the infrastructure in place to manage new deposits. Lastly, the opt-in nature of these provisions allows MFIs to take on new programs and services on their own timetable. This aspect of the new law encourages growth and

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<sup>122</sup> CHRISTEN ET AL., *supra* note 48, at 21.

<sup>123</sup> *Id.* at 7-8.

<sup>124</sup> Jones, *supra* note 6, at 201.

<sup>125</sup> *Id.*

<sup>126</sup> Microfinance Decree, *supra* note 13, art. 3.

<sup>127</sup> *Id.* art. 3, § b.

<sup>128</sup> *Id.* art. 8, § 7.

<sup>129</sup> Tuan, *supra* note 69, at 12.

<sup>130</sup> *Id.* (describing that the legal capital requirement in Vietnam is 724 times annual per capita GDP, well below the standard for Pakistan, set at 21,078 times annual per capita GDP).

minimizes systemic risk while still allowing MFIs to create their own agendas.

C. *The Range of Services Authorized Under the Microfinance Decree Will Allow MFIs to Expand the Scope of Their Operations*

In addition to legitimizing programs already operating in Vietnam, the Microfinance Decree authorizes three new microfinance activities. First, the Microfinance Decree specifically allows capital mobilization through compulsory and voluntary savings.<sup>131</sup> Second, the Microfinance Decree allows MFIs to work as agents for banks and insurance companies.<sup>132</sup> Third, the Microfinance Decree authorizes some payment services but does not elaborate on what those payment services will be.<sup>133</sup> The Microfinance Decree does not, unfortunately, leave open the option to explore other activities outside the services specifically authorized.<sup>134</sup>

By formally endorsing already existing programs, the Microfinance Decree helps bring clarity to a previously confusing policy environment. MFIs can feel confident that existing programs are now government-sanctioned, which may make MFIs more willing to expand services into new areas.<sup>135</sup> One of the criticisms of Vietnam's existing microfinance environment is that the financial products available often do not meet the needs of the poorest of the poor.<sup>136</sup> Allowing a greater range of services also gives MFIs more room to experiment with service offerings and to tailor their programs to the needs of their most needy constituents.<sup>137</sup>

Although the new set of allowed activities gives MFIs some room to expand their offerings, the law does not go as far as it should. MFIs are only allowed to offer financial products listed in the Microfinance Decree.<sup>138</sup> This new range of services gives MFIs room to expand and experiment, but limits growth by not giving them the option to create innovative products. Because the needs and financial problems of the poor are so unique, the financial solutions to these problems may need to be non-traditional.<sup>139</sup> It is

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<sup>131</sup> Microfinance Decree, *supra* note 13, art. 22.

<sup>132</sup> *Id.* art. 24.

<sup>133</sup> *Id.* art. 26.

<sup>134</sup> *Id.* art. 21.

<sup>135</sup> Jones, *supra* note 6, at 201.

<sup>136</sup> Fallavier, *supra* note 47, at 55. *See, e.g., id.* at 56-59 (explaining how current microfinance programs do not meet the needs of households that earn their livelihood through farming or fishing).

<sup>137</sup> *Id.* at 92.

<sup>138</sup> See Microfinance Decree, *supra* note 13, ch. 4, for more detail on the types of services authorized by the Microfinance Decree.

<sup>139</sup> Fallavier, *supra* note 47, at 92.



understandable that Vietnam's government may not want to give MFIs too much leeway in creating new financial products that may pose some system risk. However, modifying the legal structure to allow experimentation on a case-by-case basis would open the field to innovation while still allowing the government to maintain some level of control.

*D. Although the Microfinance Decree's Provisions Aimed at Encouraging Best Practices Will Raise the Level of Professionalism, They Will Unduly Burden Small MFIs*

The Microfinance Decree's provisions aimed at encouraging industry best practice will help to strengthen existing microfinance programs and to raise professionalism in the industry. In order to apply for licensing, all MFIs must submit a draft charter, a feasibility study, curriculum vitae of all leaders, documentation on capital contributors, and information on the MFI's financial situation.<sup>140</sup> The Microfinance Decree lays out organizational governance standards, requiring that each MFI have a Board of Management, an Audit Committee, and a Director.<sup>141</sup> The Microfinance Decree lists a number of factors which may disqualify a person from serving in any of these positions, including having a criminal history, being a representative of a company that failed because of bankruptcy or legal violations, or being a close relative of someone else in management.<sup>142</sup> The Microfinance Decree authorizes the State Bank to set requirements for the qualifications of each of these governing bodies.<sup>143</sup> The Microfinance Decree also authorizes the State Bank and the Ministry of Finance to implement a standardized reporting and statistics system for all MFIs.<sup>144</sup>

On one hand, these new requirements take positive steps towards enabling the microfinance industry in Vietnam. Requiring feasibility studies will encourage MFIs to have well thought out long-range objectives and may prevent the ad hoc attempts of the past. Setting minimum requirements for leaders will also help to encourage professionalism in the industry and prevent people with criminal pasts from entering the industry. A unified reporting and statistic system could help MFIs share information with each other and foster efforts to improve the industry as a whole.<sup>145</sup> The reports

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<sup>140</sup> Microfinance Decree, *supra* note 13, art. 9.

<sup>141</sup> *Id.* art. 16(1).

<sup>142</sup> *Id.* art. 18.

<sup>143</sup> *Id.* art. 16(4).

<sup>144</sup> *Id.* art. 32.

<sup>145</sup> Fallavier, *supra* note 47, at 92.

could also help the Bank of Vietnam to assess the status of the industry and develop policies that are more responsive to current needs.<sup>146</sup>

Unfortunately, compelling all MFIs to comply with licensing requirements may also place undue burdens on cash-strapped, small MFIs. Audits and statistical reports are often expensive and labor intensive. One MFI in Latin America found that complying with reporting requirements in their country cost an amount equal to 5% of their loan portfolio.<sup>147</sup> Some practitioners in the microfinance industry are also concerned that the qualifications requirements for leaders will not be achievable.<sup>148</sup> They are also concerned that Vietnam does not have enough qualified individuals to fill all the positions necessary.<sup>149</sup> If this is true, there will be a higher than normal demand for qualified individuals and small MFIs may not be able to afford the salaries. This perceived shortage of qualified individuals will most likely disappear over time, but in the short run small MFIs may not be able to find leadership that qualifies them to register for MFI status.

*E. New Provisions Restricting MFI Ownership Unnecessarily Reinforce the Status Quo*

The Microfinance Decree lays out two types of organizations that may establish MFIs in Vietnam. The first type consists of “[s]ocio-political organizations, social organizations, socio-professional organizations of Vietnam, charity funds and social funds.”<sup>150</sup> The second group includes “Vietnamese non-governmental organizations.”<sup>151</sup> Conspicuously absent from these groups are commercial organizations or foreign-run organizations.<sup>152</sup> The Microfinance Decree does allow foreign organizations and individuals to contribute capital to authorized groups, but it does not clarify what role these foreign entities may have in MFIs.<sup>153</sup>

The Microfinance Decree echoes provisions in the Credit Institutions Law that discourage foreign financial institutions from participating in the Vietnamese system.<sup>154</sup> Discouraging the full participation of foreign and commercial enterprises is short-sighted at best. Worldwide, foreign non-

<sup>146</sup> *Id.* at 93.

<sup>147</sup> ROBERT PECK CHRISTEN & RICHARD ROSENBERG, THE RUSH TO REGULATE: LEGAL FRAMEWORKS FOR MICROFINANCE 11 (1999).

<sup>148</sup> Tuan, *supra* note 69, at 15.

<sup>149</sup> *Id.*

<sup>150</sup> Microfinance Decree, *supra* note 13, art. 1(2)(a).

<sup>151</sup> *Id.* art. 1(2)(b).

<sup>152</sup> *Id.* art. 1.

<sup>153</sup> *Id.* art. 1(3).

<sup>154</sup> Credit Institutions Law, *supra* note 79, ch.1, art. 12.

profits are important sources of MFI funding.<sup>155</sup> In Vietnam, the presence of foreign non-profits is still limited.<sup>156</sup> Although the Microfinance Decree provides predictability for domestic institutions, foreign institutions are left in a policy environment just as unpredictable as before. Although they are new players in the microfinance scene, commercial entities provide an important source of possible future growth.<sup>157</sup> Carlos Labarthe of Compartamos, the largest microfinance institution in Latin America, argues that within five years, 80-90% of microfinance institutions will be commercial.<sup>158</sup> Some scholars, policy-makers, and commentators contend that commercialization is the only way to meet the vast demand for microfinance services.<sup>159</sup> Although it may be wise for the Vietnamese government to develop guidelines that ensure commercial microfinance programs fulfill social objectives, completely barring them from entering the field discourages innovation.

V. VIETNAM NEEDS TO PROTECT SMALL MFIS, INCLUDE NEW PLAYERS, AND CREATE A SUPPORTING REGULATORY FRAMEWORK

Although the new Microfinance Decree helps establish some predictability and stability in the microfinance system, the new regulatory scheme has a long way to go before it can truly enable MFIs operating in Vietnam. During its final assessment of the new law, the ADB stated that “it is expected that the decree will mark an improvement in the policy environment, but will still fall short of a genuinely enabling decree.”<sup>160</sup> The Vietnam regulatory scheme could be vastly improved by finding a way to accommodate small MFIs, addressing the issue of interest rate subsidies, finding a way to include international and commercial players, and making sure that the regulatory framework that is in place is effectively administered.

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<sup>155</sup> See ALEXIA LATORTUE, ET AL., *MANAGING THE FLOODGATES? MAKING THE MOST OF INTERNATIONAL FLOWS OF MICROFINANCE FUNDING* (2006), for a general discussion of microfinance funding worldwide.

<sup>156</sup> MCCARTY, *supra* note 89, at 6.

<sup>157</sup> Bruck, *supra* note 19.

<sup>158</sup> *Id.*

<sup>159</sup> Jones, *supra* note 6, at 187.

<sup>160</sup> BYAMBASAIKHAN, *supra* note 58, at 2.

A. *The Microfinance Framework in Vietnam Should Be Altered to Encourage the Growth of Small MFIs*

Rather than enabling the growth of the microfinance sector, the Microfinance Decree instead threatens the viability of small, grassroots MFIs. As discussed,<sup>161</sup> the Microfinance Decree sets capital requirements and reporting standards with which cash-strapped MFIs find it difficult to comply.<sup>162</sup> Vietnam could adjust its framework to accommodate these smaller MFIs in a number of ways. Perhaps the easiest way would be to exempt MFIs under a certain size from complying with regulations. These MFIs are so small that they do not pose a systemic threat to the Vietnamese banking system. At the very least, the small MFIs could be given an extended time period before they have to comply so that they can build capital to meet the Microfinance Decree's requirements.

If Vietnam is unwilling to exempt small MFIs, another option is to create a separate category for MFIs under a certain size. The Microfinance Decree has two tiers for requirements: one for non-deposit-taking institutions and another for deposit-taking institutions.<sup>163</sup> Adding a third tier for small MFIs that meet certain requirements would allow the government to maintain some control over MFIs while still leaving a place for small MFIs within the system.

B. *Vietnam's Microfinance Legal Framework Should Include Commercial and International Players*

In addition to taking further steps to protect existing MFIs, Vietnam should modify the current framework to include new players. The current regulations reinforce the status quo by allowing only domestic, non-profit entities to operate as MFIs.<sup>164</sup> Although the Microfinance Decree allows foreign and commercial groups to invest in existing MFIs, it is vague as to what role these groups may have in directing the day-to-day affairs of MFIs in which they invest.<sup>165</sup> Lawmakers should modify the existing framework by changing the provisions that restrict foreign and commercial entities. If the Vietnamese government has specific concerns about these entities, they could include requirements that guarantee MFIs run by these entities still meet social objectives. For example, the Vietnamese government could

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<sup>161</sup> *Supra* Part III.A.

<sup>162</sup> Microfinance Decree, *supra* note 13, arts. 3, 32.

<sup>163</sup> *Id.* arts. 3, 8.

<sup>164</sup> *Id.* art. 1.

<sup>165</sup> *Id.* art. 1.

include consumer protection provisions to ensure that commercial MFIs do not take advantage of their customers.

If the Microfinance Decree is not modified to allow these new players to own MFIs outright, policy-makers should, at the very least, alter the law to clarify the status of commercial and foreign entities investing in existing MFIs. Foreign and commercial partners may be unwilling to contribute money to MFIs when there is no guarantee that the funds will be used according to their wishes. Commercial entities in particular may be unwilling to bear the risk of partnering with MFIs if their claim on funds is tenuous. Although commercial players are just beginning to take part in the global microfinance industry, many predict that commercially-driven microfinance projects will be the next wave of growth.<sup>166</sup> If Vietnam does not take steps to clarify the status of commercial investors, MFIs in the country may be passed over for MFIs in countries where the status is clearer. Cutting off this valuable source of potential funds is short-sighted and does not enable Vietnam to participate in the global MFI market to the same extent as other countries in the region.

*C. Vietnam's New Microfinance Law Can Enable Growth Only If It Is Supported by Enabling Regulations*

Even with the positive changes outlined in the Microfinance Decree, the new law on microfinance will not create an enabling environment unless it is actually implemented. The Microfinance Decree indicates a number of future regulations which must be promulgated by the State Bank.<sup>167</sup> Drafting these regulations will require a large amount of funding and expertise. In 2005, the ADB launched a technical assistance program which authorized \$315,000 in funding to help Vietnam follow through with the creation of the necessary supporting regulatory framework.<sup>168</sup> This technical assistance program will not only assist with drafting legal documents, but will also provide training for State Bank staff and workshops for MFIs.<sup>169</sup> The technical assistance program also includes funds for sending two delegations of government officials on study tours of other Asian countries that already have strong, well-developed microfinance regulatory structures.<sup>170</sup>

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<sup>166</sup> Jones, *supra* note 6, at 193-94.

<sup>167</sup> See COLEMAN, *supra* note 91, at 2, for a list of specific areas for regulation.

<sup>168</sup> *Id.* at 4.

<sup>169</sup> *Id.* at 3.

<sup>170</sup> *Id.* at 8.

Although the ADB technical assistance program will help to establish a strong foundation, the State Bank must make implementation a key focus in order for the Microfinance Decree to enable the microfinance industry in Vietnam. MFIs may have very little incentive to follow the industry best practices outlined in the Microfinance Decree if there is no oversight. MFIs will also be more incentivized to comply with reporting procedures if the data gathered is used to create more favorable policy. Perhaps most importantly, in order for the new Microfinance Decree to create stability and predictability, the regulations that support it must also be clear, unambiguous, and easy to navigate. Without an easy-to-navigate regulatory scheme, MFIs may still hesitate to expand current offerings or start new programs.

## VI. CONCLUSION

With the assistance of the ADB, Vietnam joined the ranks of a growing number of countries that have created a special legal and regulatory framework for MFIs. Although the Microfinance Decree helps to provide more stability and predictability, the new law also contains provisions which place undue burdens on small MFIs and unnecessarily limit the participation of foreign and domestic entities. In order for the new law to truly enable the growth of microfinance, Vietnam needs to accommodate small MFIs, include measures to encourage the participation of new types of MFIs, and make sure that the provisions already in place are actually implemented. If Vietnam continues to move towards a truly enabling environment, it will be able to build from a solid foundation and help its poorest citizens become full participants in Vietnam's growing economy.